

EXHIBIT 3

1 IN THE DISTRICT OF THE UNITED STATES OF AMERICA
2 FOR THE SOUTHERN DISTRICT OF ILLINOIS

3 IN RE DEPAKOTE:

4 _____)
5 J.F., a minor, by BEATRICE)
6 SIFUENTES, next friend of J.F.,)
7 Plaintiff(s),)
8 vs.) Case 14-CV-847-NJR-SCW
9 ABBOTT LABORATORIES, INC.,)
10 Defendant(s).)
11 _____)

12 **FINAL PRETRIAL CONFERENCE**

13 BE IT REMEMBERED AND CERTIFIED that heretofore on **11/15/2017**,
14 the same being one of the regular judicial days in and for the
15 United States District Court for the Southern District of
16 Illinois, **Honorable Nancy J. Rosenstengel**, United States
17 District Judge, presiding, the following proceedings were
18 recorded by mechanical stenography; transcript produced by
19 computer.

20 **APPEARANCES:**

21 **Heath A. Novosad, Phillip Sampson, Nancy Davis Carlton**
22 **Wilde** of Bracewell & Giuliani LLP, 711 Louisiana, Suite 2300,
23 Houston, TX 77002; and,

24 **FOR DEFENDANT: Paul F. Strain and Jessica Grant** of Venable
25 LLP, 750 East Pratt St, Suite 900, Baltimore, MD 21202; and,

26 **REPORTED BY: Molly N. Clayton, RPR, FCRR**, Official Reporter
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1 they were, most importantly he didn't know their birth defect
2 rate and he didn't know their rate of malformation. So, why is
3 that important? Because if you're going to rank human
4 teratogens, you're going to put a numerical ranking on it, you
5 need to know the birth defect risk of the other teratogens on
6 the list in order to put Depakote at the top. If you don't
7 know the birth defect risk or the malformation rates of a
8 number of these drugs then, of course, you can't -- the opinion
9 is not based on any reliable methodology or data.

10 The last thing I wanted to show you, your Honor, was
11 the FDA's pregnancy -- and I'm sure you're familiar with
12 pregnancy D, which is what Depakote is, and pregnancy X, which
13 is contraindicated for women in pregnancy. Now, you recall
14 that his testimony is that Depakote is among the Top Three with
15 Accutane and Thalidomide. But if you look at the X, these are
16 all of the drugs that are contraindicated, cannot be used in
17 women who are pregnant. He did not know most of these drugs,
18 what the malformation rates were, but here's more importantly,
19 I've highlighted one, finasteride, that's Propecia, you might
20 have heard of that drug. That actually, is -- not only is it
21 Category X, it's so teratogenic that women who are pregnant
22 cannot even touch it, not allowed to even handle it. So,
23 again, when you're making this opinion that is very prejudicial
24 to a jury, especially with someone with his qualifications
25 having been at the CDC, it has to be based on some data or

1 in its most recent order about the appropriateness of this
2 opinion, saying it was appropriate, is his opinion is based on
3 quantitative data. It is. And Abbott doesn't like it. Abbott
4 may have ways to try and chip away at it. And that is what
5 cross examination is for, your Honor.

6 THE COURT: Okay. Well, I'll go back and look at
7 that. I mean, when it came in in *Raquel*, I didn't think that
8 the way it came in caused any problems that seemed to make
9 sense but Ms. Grant makes a very persuasive argument so I will
10 take a closer look at that. I still have, by the way, every
11 day when I'm here, his card from the *Raquel* case that he had in
12 front of him that said "no Accutane, no Thalidomide" after what
13 happened in *Kaleta*. So I just left that here so some days when
14 I'm deciding how long someone should go to prison I look at
15 those and remember those happy days, so.

16 Okay. Anything else we need to take up today,
17 Mr. Strain?

18 MR. STRAIN: I have one thing and that's really by way
19 of, as we approach the holiday weekend of thanks for all of us,
20 for the courtesy of extending the trial for counsel from Monday
21 to Tuesday, it takes pressure off family time and for all of
22 us, especially out-of-towners. We all appreciate that, your
23 Honor.

24 THE COURT: Well, yeah, I almost forgot that we had
25 decided to do that but I think that's good. And for the

jurors, they won't have to come in until later on that Monday, too. So, and you can all hopefully somewhat enjoy Thanksgiving amidst trial prep.

So, anything else?

MR. SAMPSON: Not for plaintiff.

MR. STRAIN: Not for the defendant, your Honor.

THE COURT: Okay. Well, I will see some of you on the 27th and everyone else ready to go on the 28th.

And I'll get you an order on everything else as soon as I can.

(Court adjourned)

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REPORTER'S CERTIFICATE

I, Molly N. Clayton, RPR, FCRR, Official Court Reporter for the U.S. District Court, Southern District of Illinois, do hereby certify that I reported with mechanical stenography the proceedings contained in pages 1 - 38; and that the same is a full, true, correct and complete transcript from the record of proceedings in the above-entitled matter.

DATED this 15th day of November, 2017.

s/Molly Clayton, RPR, FCRR